S.B.CIVIL WRIT PETITION NO.4189/2004

Mukesh Kumar & Anr. Vs. State of Rajasthan & Anr.

DATE OF ORDER :: 10th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.N.Upadhyay, for the petitioners.
Mr. Shyam Ladrecha, for the respondents.

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Under a notification dated 25.2.2004 the Director, Sanskrit Education, invited applications from eligible desirous candidates to be considered for appointment as Sanskrit Teachers against existing 175 vacancies. The petitioners applied for the same, however, their candidature was rejected on the count that they were not possessing the requisite eligibility. The recruitment to the post of Sanskrit Teachers under the Directorate of Sanskrit is regulated by the Rajasthan Sanskrit Shiksha Subordinate Service Rules, 1978 (hereinafter referred to as “the Rules of 1978”). Under the Rules of 1978 the qualification prescribed to be considered for appointment as Sanskrit Teacher Gr.III is that the incumbent must possess Secondary/Praveshika or equivalent qualification recognised by the Government with certificate and training. The eligibility of the petitioners is required to be examined in light of the qualification prescribed under the Rules of 1978.

The petitioner No.1 qualified Senior Secondary School Examination from the Board of

Secondary Education Rajasthan, Ajmer and also obtained a Bachelors Degree in Arts with the subjects of Sociology, Public Administration and Sanskrit from MDS University, Ajmer. He is also having basic school training certificate that he acquired from the Department of Education, Government of Rajasthan. The petitioner No.2 also possessed Senior Secondary School Examination certificate with the subjects of Sanskrit, Political Science and Sociology. He too is having basic school training certificate issued by Department of Education, Government of Rajasthan.

In view of the qualification possessed by the petitioners, they are eligible to be considered for Teacher Gr.III under the Rules of 1978, however, the respondents denied their right to be considered for appointment on the count that the petitioner No.1 was not having Sanskrit as an optional subject in his Senior Secondary School Examination, whereas the petitioner No.2 though was having Sanskrit in his Senior Secondary School Examination as an optional subject but is not possessing M.A. (Sanskrit/Acharya) Examination, that was necessary under the notification dated 25.2.2004.

Under the Rules of 1978 there is no desirability to have M.A. in Sanskrit or qualification of Acharya to hold the post of Teacher Gr.III. This Court in the case of Jeta Ram Khawa & ors. v. State of

Rajasthan and Ors., SBCivil Writ Petition No.1304/2004, decided on 26.4.2005, while considering the requirement of the qualification for appointment as Teacher Gr.II under the Rules of 1978, held as under:-

> "The qualification prescribed as minimum eligibility for appointment to a post under the Rules cannot be changed by administrative instructions or under the advertisement while inviting applications for filling up the vacancies. As stated above under, the Rules of 1978 the requisite qualification for appointment to the post of Teacher Gr.II in the subject of Sanskrit is Graduation or Shastri with degree or diploma in education therefore there was no just and valid reason to put the condition that the persons having Bachelors Degree in Arts with Sanskrit as optional subject shall not be eligible for appointment to the post of Teacher Gr.II. The Governor under proviso to Article 309 of the Constitution of India exercise legislative powers, as such no modification, alteration or amendment could be made in the Rules framed under proviso to Article 309 of the Constitution by administrative fiat.
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> In view of it the condition No.(A) in clause (3) of the advertisement dated 25.2.2004 is illegal being in contravention of the Rules of 1978 and the same therefore deserves to be modified in accordance with the qualification prescribed under the Rules."

The Division Bench of this Court in the case of State of Rajasthan v. Jeta Ram Khawa & Ors., DBCivil Special Appeal (Writ) No.426/2006 DR(J), decided on 17.4.2006, while affirming the judgment referred above, held as under:-

> "We are unable to sustain this stand taken by the respondents. Once the recruitment to the service is governed by the Statutory Rules, the personal view of the authorities issuing advertisement about eligibility criterion that ought to have been more suited is of little relevance; their personal choice is not a real question for consideration in the matter of examining the eligibility of candidates who have applied in response to the advertisement. When recruitment to any post is under rules, the authority entrusted with such recruitment cannot be permitted to deviate from such rules though prescribing different or excluding eligibility criterion in advertisement issued for the purpose. Advertisement cannot be in contravention of rules. Executive power of the State in such matters is restricted to matters not provided under the rules, and to the extent they do not contravene express provisions in the rules. Once a person with graduate qualification confer with diploma or degree in education is considered eligible under the rules, without any further conditions, a qualification of graduation cannot be excluded on supposed ground of medium used in answering the questions in examination."

In view of the law laid down by Division Bench of this Court in the case of Jeta Ram Khawa (supra) the prescription of any additional qualification by the administrative instructions does not make a person ineligible to be considered for appointment who is otherwise having required eligibility in accordance with the rules.

In view of whatever discussed above, this petition for writ deserves acceptance, therefore, the same is allowed. The petitioners were permitted to face selection proceedings as a consequent to an interim order dated 27.9.2004. The respondents are accordingly directed to declare result of the selection proceedings and in the event the petitioners are selected, they may be given appointments in accordance with their merit. The petitioners shall also be entitled for getting seniority on basis of their placement in the select list on notional basis in the event of their selection for appointments.

(GOVIND MATHUR),J.

Kkm/ps.